

## **Administrative and Legal Actions**

This section provides a brief description of the procedures POAs can use after independently verifying unreported income and confirming possible payment of excess rental assistance. As noted in the Preface, for the first year of large scale CMIV, HUD urges POAs to exercise flexibility in making any decisions with respect to the recovery of excess rental assistance. HUD is not encouraging any POA to recover excess rental assistance identified as a result of the 1998 computer matching income verification process.

Discrepancies between incomes calculated for HUD program purposes and household incomes reported by the IRS and the SSA do not, in and of themselves, establish that a tenant has failed to comply with HUD program requirements. Discrepancies between data sources will often be accounted for by variations in applicable reporting periods, valid exclusions and deductions from income, and changes in income not required to be reported on an interim basis.

Verified discrepancies do not, in and of themselves, establish the elements of intentional fraud that would result in further action such as termination of assistance, referral for prosecution, and action to collect under payments. (See Handbook 4350.3, 5-19(b)-(e).) Each POA will make a determination if a verified discrepancy warrants referral for further investigation.

## **General Provisions**

Should a POA elect to pursue the recovery of excess rental assistance or terminate assistance/tenancy, consistent with POA policies, the POA must afford tenants appropriate due process, as described in HUD program requirements and guidelines or in state and local regulations. Additionally, the tenant must be afforded due process in areas related to unresolved disputes over income discrepancies and adverse actions.

For those POAs that elect to pursue the recovery of excess rental assistance, the following sections provide details that will be useful in establishing consistent repayment practices.

## **Obtaining Repayment of Excess Rental Assistance**

Once the POA determines that a household has received excess rental assistance, it is the responsibility of the POA to seek repayment (recovery) of the excess rental assistance. Repayment options may include:

- Tenant repayment of excess assistance in full;
- Tenant repayment of excess assistance through the use of a repayment agreement;
- POA decrease of prospective rental assistance without the use of a formal repayment agreement; and
- Repayment through legal action (such as garnishment).

All repayment options executed to recover excess rental assistance should comply with due process regulations. All recoveries of excess rental assistance should be recorded and reported based on established HUD procedures.

In some instances, POAs may not be able to recover excess rental assistance and may choose to terminate assistance to a household that received excess rental assistance based on unreported tenant income.

### **Full Repayment**

The POA should first seek full repayment of the amount owed. If the tenant is willing to repay the full amount of excess rental assistance, the POA should review its repayment policy to determine if any state or local provisions apply regarding the creation of the repayment agreement. In general, the agreement should state the full amount of excess rental assistance to be paid and be signed and dated by both the POA and the tenant. Once the repayment is received, the POA should account for the repayment according to established HUD procedures and close the case for TASS reporting purposes by completing the case tracking form described in Chapter 4.

### **Repayment Agreements**

If the tenant will not or cannot repay the full amount at once, the POA should request that the tenant enter into a repayment agreement. In establishing a repayment agreement, the POA should review its established repayment policy as stated in its Administrative and Operating Plans (for PIH programs) or in its contract with HUD, all related regulations and HUD Handbook 4350.3. Additionally, the POA should refer to applicable state or local provisions if they apply to the creation of the repayment agreement.

In general, the repayment agreement should state the full amount of excess rental assistance to be repaid, the monthly payment amount, and number of months for which the payment is applicable. The agreement should then be signed and dated by both the POA and the tenant.

The POA should establish the appropriate internal accounting procedures to monitor repayments and pursue appropriate administrative action should tenants fail to adhere to repayment agreements. The POA also should adhere to HUD program requirements for reporting recovered excess rental assistance.

Should a tenant fail to adhere to the repayment agreement, the POA should follow its established procedures for processing tenant repayment defaults.

### **Decreasing Tenant Rental Assistance Without a Repayment Agreement**

The POA can increase the tenant's rent to the HUD-approved ceiling or market rent to recover excess rental assistance. In doing so, the POA should follow established program

policies and accounting procedures, as well as due process procedures stipulated by HUD program areas. Rent should be increased in accordance with the timeframes and administrative procedures set forth in HUD's regulations and handbooks. The POA should notify tenants in writing 30 days prior to rent increases. The POA should document the amount of excess rental assistance being recovered and the length of time the ceiling or market rent will apply. Additionally, the POA should adjust the amount of recovered assistance when ceiling or market rents change.

### **POA Retention of Recovered Excess Rental Assistance**

Current HUD regulations allow PHAs to retain 100% of recovered excess rental assistance from tenants under Public Housing programs and the greater of 50% of recovered excess rental assistance or the amount of funds required to cover the reasonable and necessary costs associated with the costs incurred by the PHA related to collections from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of Section 882.216 or Section 887.405 for tenants under Section 8 Tenant-Based programs. Reasonable and necessary costs include, but are not limited to, the costs of the investigation, legal fees, and collection agency fees.

Under Housing programs, OAs can retain up to 20% of recovered excess rental assistance to offset the costs of recovering funds pursuant to Handbook 4381.5, Chapter 6, Paragraph 6.40. (See Handbook 4350.3, Chapter 5, for processing instructions). For Housing programs, accounting for repayments continues each month as credit (negative adjustment) on vouchers until full restitution is made.

### **Initiating Legal Actions**

If the tenant is unwilling to enter into a repayment agreement and the POA does not increase the tenant's rent to recover excess rental assistance, the POA can begin legal proceedings to obtain payment. A POA's decision to pursue legal action may depend on a number of factors including:

- The likelihood that funds could be recovered;
- The costs to recover funds are not excessive and do not offset the amount of recovery;  
or
- The willingness of courts to uphold the claim.

The POA should follow its established procedures for filing claims for recovery of excess rental assistance. These legal actions may be pursued at the same time as, or after, termination of assistance or tenancy has been pursued by the POA. In all cases, the POA should follow established procedures, as applicable, when recovering excess rental assistance and all due process provisions established by HUD.

All third requests for HUD tenant letters are sent via certified mail. POAs needing a copy of the certified mail receipt should contact the TASS Technical Assistance Center at 1-888-708-8277.

### **Referral to Inspector General**

Only where a POA discovers egregious abuses, such as cases in which independent verification reveals intentional under reported income that resulted in rental or subsidy overpayments, should the POA elect to refer the case to the Inspector General. In these cases, a POA must provide the following material to support the finding of fraudulent acts:

- Summary of fraudulent act and how it occurred;
- All relevant applications and certification forms that contain false statement(s);
- Public records and documents obtained during verification and research efforts that show tenant falsified their application or reexamination forms;
- Potential witness list (to include names, addresses, telephone numbers, and summary of information each has relevant to the case);
- The calculations of fraudulent subsidy received, including comparison of subsidy calculations based on what the tenant reported and what was the actual amount received;
- A chronology of events and summary of the POA's efforts on the case; and
- Copies of material related to certified mail sent to tenants as described in Section 3.3.

## **Terminating Rental Assistance and/or Tenancy**

### **Terminating Tenancy Under PIH Programs**

A PHA can terminate tenancy or rental assistance if a tenant fails to report changes in income or family composition or refuses to repay excess rental assistance. PIH requirements for terminating tenancy or rental assistance vary by PIH program area as described in the following sections.

### **Terminating Tenancy Under Public Housing**

The requirements for PHAs in terminating tenancy Public Housing programs are detailed in 24 CFR Section 960 and 966. Refer to these citations for more information. (See Appendix F for a sample letter to head of household and follow-up letters from POA and Appendix G for a sample notification of termination.)

### **Initiating Termination of Rental Assistance Under PIH Section 8 Programs**

The requirements for PHAs to initiate the termination of rental assistance under Section 8 Tenant-Based programs are detailed in 24 CFR Section 982 while the requirement for PHAs to terminate tenancy under PIH Section 8 Project-Based program are detailed in 24 CFR Section 983. (See Appendix G for a sample notification of termination.)

## **Initiating Termination of Tenancy Under Housing Programs**

An OA can pursue legal action to terminate tenancy, i.e., evict a tenant, due to material noncompliance which includes failure to supply all required household income on a timely basis. The HUD Handbook 4350.3 provides a detailed explanation of material noncompliance. If an OA terminates a lease agreement and evicts a tenant, the OA should give the head of household written notice. A HUD required notice may run concurrently with a state or local required notice. Legal actions may be initiated at any time to terminate tenancy.

## **Due Process**

**No recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching programs, until an officer or employee of such agency has independently verified such information.** [Computer Matching and Privacy Protection Act of 1988; Public Law 100-503; October 18, 1988]

## **Grievance/Informal Hearing/Review Procedures**

If there are unresolved disputes between the POA and the tenant regarding income discrepancies or if the POA chooses to take adverse action against the tenant, the tenant can seek review of the POA's determination or the POA's adverse action through a grievance, informal hearing, or review procedure. These procedures are different for the PIH and Housing Programs.

### **Public Housing and Section 8 Tenant-Based Programs**

The following grievance or informal hearing procedures apply for Public Housing and Section 8 Tenant-Based programs.

#### **Settling a Tenant Grievance Informally – Public Housing**

The tenant should personally present any grievance, either orally or in writing, to the PHA during a meeting so that the grievance can be discussed informally in an attempt to settle the grievance without a hearing. The POA should prepare a summary of the discussion for the tenant's file and provide a copy to the tenant. The summary should specify the names of the participants, date of the meeting, the nature of the grievance, and the rationale for settlement, if settlement is reached. If the POA and the tenant are unable to settle the grievance informally, the POA should follow procedures stated under 24 CFR Section 966 for setting a formal hearing.

#### **Conducting a Hearing – Public Housing**

If the tenant submits a written request for a hearing within a reasonable time after receiving a summary of the discussion, the tenant should be afforded a grievance hearing. The written request should specify the reasons for the grievance and the action or relief sought. The hearing should be conducted in accordance with the PHA grievance procedures and regulations set forth in 24 CFR Section 966. There shall be no requirement for the tenant to escrow the disputed rent as a precondition to review of a dispute regarding an income discrepancy or PHA adverse action based on the Federal tax data."

#### **Conducting an Informal Hearing – PIH Section 8 Programs**

PHAs administering the Section 8 Tenant-Based Program are required to offer participants (tenants) the opportunity for an informal hearing to dispute income and rent data, and various adverse actions taken by the PHA. The informal hearing considers whether certain decisions relating to the household's circumstances are in accordance with the law, HUD regulations, and PHA policies. Procedures for conducting informal hearings are included in the PHA Administrative and Operating Plans. Informal hearing regulations are set forth in 24 CFR Section 982.

### **Project-Based Programs Administered by the Office of Housing**

There are no formal grievance procedures issued by HUD for terminating tenancy under Housing's rental assistance programs. POAs administering these programs should refer to due process procedures required by state or local laws.

### **Tenant Consultation with HUD Regarding Rights and Responsibilities Intervention**

If a tenant has questions related to the computer matching income verification process, the tenant should be directed to contact the Technical Assistance Center at 1-888-825-3916.

If a tenant believes that he/she has been treated unfairly, the tenant may contact the local HUD Field Office Director, Program Center Coordinator, or HUD Office of Housing for further clarification of the tenant's rights and responsibilities. Additionally, the tenant may request a review of the process and decision before a final action is taken.